

based on research which they have done at claimant's instance in preparation for trial. Libellant insisted that the discovery was necessary not to elicit their opinions as experts but rather to ascertain the factual scope and nature of the research done so that it possibly may be in a better position to cross-examine these witnesses on trial and prepare a rebuttal to the claimant's defense. Having in mind that the field in question here is one of scientific controversy wherein without prior discovery cross-examination cannot be expected successfully to perform its historic function and effective evidence in rebuttal, though perhaps in existence, cannot be produced forthwith upon the close of the claimant's defense, I feel that here there is sufficient showing of necessity, within the rule of *Hickman v. Taylor* if applicable here, to allow the discovery to proceed.

"I hold also that this court is without power, especially in view of 28 U. S. C. 2412, to condition the government's right of discovery under the rules upon the payment of the claimant's attorneys' fees and expenses incurred in connection with the proposed depositions. If the government is not conditionally chargeable with costs (when its suit is unsuccessful), it seems scarcely consistent to rule that it may be unconditionally subjected to a substantial item irrespective of the outcome of its action."

Before the depositions were taken, the claimant advised that it desired to withdraw its claim. On June 13, 1950, the claimant filed a formal withdrawal of its claim, and on June 27, 1950, judgment of condemnation was entered. Thereupon, the court ordered that the product be delivered to a charitable institution.

3178. Misbranding of Farador device. U. S. v. 1 Device * * *. (F. D. C. No. 28723. Sample No. 61356-K.)

LIBEL FILED: February 16, 1950, Eastern District of Missouri.

ALLEGED SHIPMENT: On or about August 6, 1949, by the E. S. Robbins Forwarding Co., from Englewood, Ohio.

PRODUCT: 1 *Farador device* at Moberly, Mo., together with 1 direction booklet. The device consisted of a metallic cylinder closed at both ends. To one end was attached, by means of wires, two metallic plates which were to be applied to various parts of the body while the cylinder was immersed in cold water.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the direction booklet were false and misleading. These statements represented and suggested that the device was adequate and effective for the prevention, treatment, and cure of most of the diseases of the human body, including, but not limited to, appendicitis, blood poison, tuberculosis, syphilis, spinal meningitis, apoplexy, convulsions, sexual debility, epilepsy, gonorrhoea, infantile paralysis, malaria, paralysis, and heart disease. The device was not adequate or effective for the prevention, treatment, or cure of the diseases, conditions, and symptoms stated and implied.

DISPOSITION: May 22, 1950. Default decree of condemnation. The court ordered that the device and booklet be delivered to the Food and Drug Administration.

3179. Misbranding of steam cabinet device. U. S. v. 6 Devices, etc. (F. D. C. No. 28501. Sample No. 68350-K.)

LIBEL FILED: January 6, 1950, Western District of Washington.

ALLEGED SHIPMENT: On or about November 1, 1949, by the Healthmaster Steamette Co., from Burbank, Calif.

PRODUCT: 6 *steam cabinet devices* at Seattle, Wash., together with a number of accompanying leaflets. Examination showed that the device was a portable steam cabinet or Turkish bath. It consisted of plastic stretched over an alumi-